

DECISION



15775
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest Against Army Corps of Engineers' Proposed Award of Contract]

FILE: B-200165, B-200165.2

DATE: December 31, 1980

MATTER OF: Patterson Pump Company;
Allis-Chalmers Corporation

DIGEST:

1. Protest that agency improperly corrected discrepancy between extended prices and total price as obvious clerical mistake is denied where discrepancy admits to only one reasonable interpretation ascertainable from face of bid.
2. Failure to return specifications with bid does not render bid nonresponsive where bidder signed and submitted Standard Form 33 incorporating specifications.
3. Protest that award to foreign firm violates Buy American Act, 41 U.S.C. §§ 10a-d(1976), is denied since Act is concerned with place of manufacturing and not firm's nationality.
4. In applying Buy American Act, agency evaluating bid to supply pumps properly did not consider costs of model pump tests or value of supplier's instructions to subcontractor since tests and instructions are not components of end product.
5. Information relating to bidder's responsibility may be submitted after bid opening.
6. GAO does not consider allegations that supplies described in responsive bid will not meet contract performance requirements since that is matter of contract administration which is responsibility of contracting agency.

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Allis-Chalmers Corporation and Patterson Pump Company [protest the Army Corps of Engineers' proposed award of a contract for three large pumping units and installation instructions to Axel Johnson Corporation] under invitation for bids No. DACW29-80-B-0046. The pumping units are for use in a flood control and drainage project in Louisiana.

[Allis-Chalmers protests on two grounds. The first is that Axel Johnson's bid contained a discrepancy between its extended prices and the total price which Allis-Chalmers alleges the Corps improperly corrected as an obvious and apparent clerical mistake. The second ground is that Axel Johnson failed to return with its bid all of the specifications contained in the solicitation package.]

[Patterson Pump raises several issues, two of which involve application of the Buy American Act,] 41 U.S.C. §§ 10a-d (1976), which, as implemented by Defense Acquisition Regulation (DAR) § VI (1976 ed.), [provides a preference for suppliers of domestic source end products by requiring application of an added evaluation factor to offers where the cost of the foreign components of the end product equals or exceeds 50 percent of the cost of the end product. Although Axel Johnson certified and the Corps evaluated its bid as offering a domestic source end product, Patterson Pump contends that Axel Johnson is a Swedish company and award to it would violate the Act, whereas award to a domestic firm would enhance the economy.] [Patterson Pump also argues that while Axel Johnson represented that not more than 48 percent of the cost of all articles, materials, and supplies which are directly incorporated into the end products is of foreign origin] (the pumps will be manufactured in the United States), [the company failed to take into account that it will perform model tests in Sweden, as stated in its bid, and will supply a domestic subcontractor and manufacturer with information necessary for designing, fabricating, and assembling the pumps. The foreign tests and the information Axel Johnson will supply the subcontractor,] argues Patterson Pump, [are of monetary value and should be included as "foreign content" in the evaluation of Axel Johnson's bid for the purpose of applying the Act, thus rendering Axel Johnson a supplier of a foreign source end product.]

We deny the protests.

Allis-Chalmers' Protest

The IFB required a unit price each for a pumping unit (item 1), factory testing of a model pumping unit (item 2), and the services of an engineer (item 3). Space was provided for including the unit prices, the extended prices and the total price. The IFB stated that a single award was to be made, and contained the following clause:

"ARITHMETIC DISCREPANCIES.

"(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

* * * * *

(4) Apparent errors in addition of lump-sum and extended prices will be corrected."

[Axel Johnson's bid contained a discrepancy between the total bid price and the veritable sum of the extended prices.] The following is an actual reproduction of Axel Johnson's bidding schedule submitted with its bid:

ITEM NO.		QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	***	3	ea	\$797,311	\$2,391,933
0002	***	1	Job		\$ 10,000
0003	***	90	Estimated Man Cal Day	\$ 350	\$ 31,500
TOTAL					\$2,432,933

[The extended prices (under "Amount") are consistent with the unit prices. However, the total -- by itself reasonable in comparison with the other bids received -- exceeds the true sum of the extended prices by \$283,500, and is not the lowest price bid. Upon evaluation the Corps determined that the bid contained an obvious arithmetical error, that the bidder erroneously added \$315,000 instead of \$31,500 for the extended price of item 3, and that the bidder's actually intended bid was \$2,463,433, the correct sum of the extended prices. After Axel Johnson verified its intended bid to be \$2,463,433, the Army corrected the total to that amount, which was the lowest price bid.)

In correcting the bid, the Corps relied upon terms of the IFB which stated that for the purpose of evaluation apparent errors in the addition of extended prices will be corrected, and upon DAR § 2-406.2 (1976 ed.) which provides that any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award if the contracting officer has first obtained the bidder's verification of the bid actually intended.

[Allis-Chalmers argues that Axel Johnson's bid failed to state a definite price, giving Axel Johnson the option to insist that its actually intended price is either \$2,746,933 or the actual sum of the extended prices; therefore, the bid should be rejected as nonresponsive.]

The general rule is that where a bid is readily susceptible of being interpreted as offering either one of two prices shown on its face, one of which is low and the other is not, the bid must be rejected even if one of the prices was not a factor in the evaluation. See Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD 279; 49 Comp. Gen. 107 (1969). However, correction is permissible where a discrepancy admits to only one reasonable interpretation ascertainable from the face of the bid or from reference to the Government estimate, the range of other bids, or the contracting officer's logic and experience. See G.S. Hulsey Crushing, Inc., B-197785, March 25, 1980, 80-1 CPD 222.

We hold that there is only one reasonable interpretation of Axel Johnson's bid, namely, that Axel Johnson intended to bid the sum of the extended prices but made an error

in adding them. A glance at the bidding schedule reveals that the unit and extended prices are consistent with each other, but the columns of digits in the extended prices are misaligned so that the bidder added item 3 as though it were \$315,000, instead of the \$31,500 stated. The fact that \$283,500 (the difference between the total price and the extended prices) equals the difference between \$315,000 and \$31,500 confirms the nature of the bidder's mistake.

Furthermore, it is obvious that Axel Johnson did not intend a unit price of \$3500 and an extended price of \$315,000 for item 3 because those prices would be wholly inconsistent with the nine other bids received (which offered extended prices ranging from \$27,000 to \$60,750). See Ideker, Inc., B-194293, May 25, 1979, 79-1 CPD 379.

Based on the above, we believe the Corps properly concluded that Axel Johnson's total price was in error rather than the unit and extended prices contained in the bid.

Regarding Allis-Chalmers' complaint that Axel Johnson failed to return all of the specifications with its bid, we note that Axel Johnson did sign and submit the Standard Form 33 with its bid. That form listed section M of the IFB, where the specifications in question were set forth, and contained the following language:

"In compliance with the above, the undersigned offers and agrees, if this offer is accepted * * *, to furnish any or all items upon which prices are offered * * *."

We have held that the SF 33 listing of the documents contained in the solicitation package incorporates the entire package by reference, and the bidder's execution of the SF 33 makes the bid responsive even though portions of the package are not physically returned. International Harvester Company, 58 Comp. Gen. 409, 413 (1979), 79-1 CPD 259 at pages 6, 7. Therefore Axel Johnson's failure to submit the specifications with its bid was not improper.

Patterson Pump's Protest

The discussion of Patterson Pump's protest regarding the application of the Buy American Act requires no additional background since it is clear from the protester's argument that it misconstrues the scope of the Act. The Act requires in pertinent part that "only such manufactured articles, materials and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States shall be acquired for public use." 41 U.S.C. § 10a (emphasis added). The Act is concerned with the place of manufacturing (or mining or production) and not the nationality of the bidder. Hawaiian Dredging & Construction Company, a Dillingham Company; Gibbs & Hill, Inc., B-195101, B-195101.2, April 8, 1980, 80-1 CPD 258 at page 4.

Regarding the foreign model tests and the instructions Axel Johnson will provide its subcontractor, while these undoubtedly represent considerable monetary value, they are not "components" of the pumps for the purpose of applying the Act. In determining whether to apply the preference one considers only the "end product" and its "components." DAR § 6-102.1. The end product only includes the manufactured product(s) which fulfills the agency's essential need—here the pumps, see Dubie-Clark Company, Patterson Pump Division, B-189642, February 28, 1978, 78-1 CPD 161 at pages 6-8,—and not other contract items such as services or tests of the product after it has been manufactured. Bell Helicopter Textron, 59 Comp. Gen. 158 (1979), 79-2 CPD 431 at pages 9-15. Only those articles, materials, and supplies which are physically and directly incorporated into the end product constitute components. See Cincinnati Electronics Corporation, et al., 55 Comp. Gen. 1479, 1493 (1976), 76-2 CPD 286 at page 19. Since the model testing costs are neither end products nor components of the pumps, they properly were not included in the Buy American evaluation. Similarly, Axel Johnson's plans and instructions for manufacturing their pumps are not components. See Hawaiian Dredging, et al., supra at page 5. Therefore, we do not question Axel Johnson's certification and the Corps' evaluation that Axel Johnson offered to provide a domestic end product.

Patterson Pump also alleges that after bid opening the Corps requested and received additional information regarding the pumps' engines. The Corps, un rebutted by the protester, responds that it contacted an Axel Johnson subcontractor to solicit information concerning only its manufacturing experience for the purpose of determining the subcontractor's qualifications. (Such action did not violate any procurement laws or regulations; it is fundamental that information relating to the bidder's ability to perform the contract, i.e., its responsibility, may be provided after bid opening.) Seacoast Trucking & Moving, B-200315, September 30, 1980, 80-2 CPD 235.

Finally, Patterson Pump raises additional issues which are not for consideration by this Office. Patterson Pump contends that the pump speed of 261 r.p.m. stated in Axel Johnson's bid is not adequate to perform all of the solicitation's requirements. The solicitation did not require any particular pump speed, but listed specific performance requirements. Since Axel Johnson's bid did not take exception to these requirements and agreed to supply items fully complying with all the terms and conditions of the IFB, the bid was responsive and may be accepted. Peter Gordon Company, Inc., B-196370, July 18, 1980, 80-2 CPD 45 at page 4. (Whether or not Axel Johnson's pumps will actually meet the specifications is a matter of contract administration which is the responsibility of the procuring agency, not this Office.) C. Engel's Sons, Inc., B-199578, September 2, 1980, 80-2 CPD 167.

Patterson Pump also contends that the subcontractor listed in Axel Johnson's bid as a gear manufacturer lacks the necessary experience to perform the work properly. Thus, (the protester questions Axel Johnson's responsibility.) See General Electric Company, B-196383, October 26, 1979, 79-2 CPD 299. (This Office does not review affirmative determinations of responsibility unless the protester shows either that procurement officials may have committed fraud or that the solicitation contained definitive responsibility criteria which were not applied.) Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 449 (1974), 74-2 CPD 365. (Since the protester has failed to show either, we will not consider the matter.)

(The protests are denied.)

Milton J. Arnold

Acting Comptroller General
of the United States